

# **NOTES AND COMMENTS**

## **PROBLEMS AND CHALLENGES FACED BY LEGAL RESOURCE GROUPS IN SOUTH ASIAN REGION\***

### **I Legal activism in South Asia at crossroads?**

THE LAST decade has witnessed in South Asia a resurgence and maturing of the legal aid movement. The maturing is typified by a shift away from top-down, professional-client based approaches to legal aid towards a service oriented concept of "legal assistance" and a self-reliance oriented concept of legal resources. The resurgence is evident from the proliferation of organisations providing legal support and legal services both in the governmental and non-governmental spheres. Many of these organisations adopt what in Indonesia has come to be described as a structural approach to legal service. Legal activism, in such an approach, is viewed as one (among several) means towards bringing about structural reform and social change in the societies of South Asia which are characterised by massive impoverishment and powerlessness of the many and an intolerably skewed distribution of wealth, resources and power.

Legal resource groups in the region are thus aspiring to help bring about profound social transformations and therein lies a dilemma for the law activist. He will have to move beyond the traditional palliative, ameliorative, incremental role that conventional legal activism offers. He will have to help tear down unjust and exploitative structures rooted in the legal system and this may well mean the demise of several existing legal structures. Changing existing legal orders may not be a sufficient condition but is surely a necessary condition towards changing existing national and international economic and social orders.

In such an endeavour the law activist is forced into new, often confrontational, relationships with government, private power, and often the prevailing leadership of the very legal profession itself. He is also forced into new collaborative relationships (based upon a notion of partnership between equals) with social action groups (SAGs) and with victim groups who are being assisted. Many of the problems and challenges faced by legal resource groups in the region stem from these new relationships. Their response to these challenges will soon determine whether the tribe of law persons will play a significant or a marginal role in mass based struggle for justice that is currently underway in Asia.

### **II Legal resource groups and their governments**

The most serious problems that legal resource groups face are in their relationships to governments. The attitude of governments ranges widely:

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### **(1) Repression**

Repression takes place both through the use of draconian laws (relating, *e.g.*, to sedition, subversion) and through subtle use of detention (under laws of general preventive detention or special laws such as those dealing with internal security or terrorism), torture and extra-judicial executions (sometimes euphemistically described as “disappearances” or “encounters”). By and large, legal resource groups in the region have stood firm against repression and responded to the challenge by constant recourse to the law itself, not necessarily to secure relief and remedies but to expose the blatant abuse of power involved. Repression against a legal resource group has come to represent grudging admission by the powers that be of the importance of the work of such group. It has often tended to help rally groups together and proved counter productive. Its intimidatory aspects seem to have been countered by these groups and only governments willing to use law to institute a “reign of terror” can successfully use it to repress social action. For most governments of the region, law has tended to be a double edged sword. It does, on the one hand, provide an effective tool for repression. But, on the other hand, it also provides the mechanism for holding governmental authorities accountable.

### **(2) Covertness**

Most governments in the region use laws, such as an official secrets Act, to cloak their activities in utter secrecy. Information essential to social action is usually withheld from the public. Even inspection of court records in the rural areas of the State of Maharashtra (as part of a study attempting to identify changing patterns of criminal deviance) required official permission from the protonotary of the Bombay High Court. The Bhopal tragedy poignantly demonstrates how pathological the bureaucrat’s quest for secrecy has become. Legal resource groups have countered with demands for a new freedom of information law but one cannot be over optimistic of such an approach. Difficult though it may be, these groups will have to make creative use of the litigation process to compel disclosure and the judiciary will have to change its current attitude that seems to stem from a presumption of secrecy and non-disclosure.

### **(3) Governmental lawlessness**

Governmental lawlessness is perhaps the single most important problem faced by legal resource groups. Upendra Baxi has detailed the various forms such lawlessness takes in his pioneering book *The Crisis of the Indian Legal System*.<sup>1</sup> Time and again, those involved in social action litigation in India have been frustrated when courtroom victories prove to be pyrrhic because

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1. (1982).

governmental authorities flout, with impunity, the directions and orders of the court. Such authorities act as if they are above the law and too often get away with such conduct. In some contexts, legal resource groups have responded by mass community based, rights awareness campaigns to build up the public opinion needed to combat such governmental lawlessness through mass protests, demonstrations and direct action.

#### **(4) Co-optation**

Where the stick has failed (or is unlikely to succeed), governments have been quick to offer the carrot. Social action groups have had to resist being co-opted by the very system they are challenging. Legal resource groups, in particular, have had to deal with efforts by governments to retain control over legal services programmes by bringing them under government administration and government funding. Unlike repression, whose more blatant forms are well known, the techniques of co-optation are much more subtle and could well be the subject of careful legal study and documentation.

### **III Legal resource groups and private power**

In his farewell judgment as Chief Justice of the Indian Supreme Court, Justice P.N. Bhagwati drew attention to the grave problems posed by centres of economic power. Such centres of private power are even more immune from accountability than their public counterparts and often operate their own private "armies" and security forces. Moreover, they are in a dominant position *vis-a-vis* the legal profession. The economic base of the average lawyer's practice is often very much controlled by the private sector. Moreover, the experience with powerful multinational corporations shows that the line between private power and the state cannot clearly be demarcated with local government officials often being little more than lackeys for a giant multinational. The impoverishment of a majority of the peoples of Asia has largely resulted from the feeding of transnational hungers.

#### **(1) Hunger for developing country natural resources**

Historically, this hunger was for the primary commodities and primary products of developing countries. Today the hunger is also for developing country lands on which transnational agribusiness plantations are producing cheaply (for global markets) bananas and pineapples in the Philippines, strawberries in Mexico, horticultural products in Kenya, oil palm in Malaysia. More recently there is a new hunger for such lands as pollution havens for ultrahazardous industry and even as dump sites for toxic wastes! Ruling elites in developing countries are willing accomplices in the feeding of such international hungers bargaining away long term pauperisation of the human and natural environment for short term profits and wealth.

## **(2) Hunger for developing country labour**

This hunger is both for cheap unskilled labour (in export processing zones or as “guest workers”) and for skilled labour (creating a perpetual brain drain). All this takes place in the name of a so-called international division of labour. But the link between feeding international hungers for developing country labour and the pauperisation of the human environment and degradation of the physical environment in these countries is rarely made.

## **(3) Hunger for developing country markets**

This hunger stems from their use, both as a dumping ground for surplus production as well as to sustain levels of economic growth in industrialised countries. The feeding of this international hunger also takes a heavy toll on the human and natural environment of developing countries.

## **(4) Hunger for ways (including developing projects) to recycle developed country capital surpluses**

This hunger can result in the export of debt and inflation to developing countries with very real costs in terms of human suffering.

## **(5) Hunger for superpower spheres of influence**

This hunger had led to the unfortunate militarisation of the developing world with, once again, heavy costs to the human and natural environment.

These international hungers are not without their national counterparts, of course. For example, the growing incidence of bonded labour and slavery like practices are the product of models of development which are primarily oriented to serving the needs of minorities of urban-industrial population. There is, thus, a vested interest in keeping a large sector of the population unorganised and depoliticised, so that the poor can be availed of as a source of perennial, cheap and docile labour. Similarly, policies of rural development have tended to make only such inputs into the rural economy as are necessary to ensure outputs needed by the urban-industrial sector.

The feeding of these transnational hungers often takes the form of “development projects” in which our governments are willing collaborators with transnational actors in endeavours which bring benefits to a privileged few but impoverishment, starvation, exploitation to the many. Such projects include:

(a) Industrialisation projects which unquestionably embrace hazardous (so-called “high”) technologies and sacrifice or imperil the lives of workers and communities.

(b) Agricultural development projects which are intended to achieve “food self-sufficiency” or export earnings but which end up financing unequal urban development while causing rural hunger, exploitation and impoverishment.

(c) Large scale infrastructure or dam building projects which displace

thousands and ruin ecology for survival to provide energy and water for a privileged few.

Legal resource groups have often been called upon to confront such projects. Working in collaboration with investigative journalists, they have called attention to the various acts of lawlessness that have occurred within such projects and indeed to the very lawlessness of some of these projects themselves. Increasingly, these groups will have to turn to human rights law to confront and challenge abuses of private power. They will also need to try to bring in law to help in the mobilising and organising victim groups to fight back against powerful elites subjecting them to repeated victimisation. The struggle to use law in this regard will not be an easy one since some laws may indeed be a product (and reflect the needs) of such powerful elites. But some strides have been made (in India, *e.g.*, through social action litigation) to interpret provisions of the Constitution guaranteeing fundamental rights in a manner which casts upon the state positive obligations to protect its people against the excesses and abuse of private power.

#### IV Legal resource groups and other social action groups

Legal activists have only recently been attempting to reach and serve victim groups located in remote rural settings. They have only recently been shifting from a reactive to a proactive approach. In such efforts to reach out to disadvantaged groups and communities, it has been essential that they work with and through other social action groups already in close contact with the grassroots level. Such relationship is fraught with difficulties. Most such groups have strongly negative perceptions of lawyers, law and legal institutions. These perceptions are often well founded and based on past experience. Legal resource groups need tact, understanding and patience to help overcome these perceptions. Moreover, they often need to change their own attitudes (which reflect all too often the adversarial world lawyers work in) and ability to relate to and communicate with social activists. There is also a need to help both legal and non-legal social action groups appreciate that, despite differences in working methods and approaches, they both share fundamental values and hopefully a shared vision of where they would like to see their societies to be going. For their part, social action groups will have to adjust their fiercely individual, "go it alone" working styles and learn to appreciate when and how to draw legal resource groups in as partners towards more effective social action campaigns.

#### V Legal resource groups and victim groups

Many of the tensions that sometimes typify the relationship between legal resource groups and other social action groups also often typify the relationship between the former and disadvantaged groups and communities and organisations of the rural poor. Such community groups and organisations also have largely negative perceptions of lawyers and the law. Often they are cynical having been hurt too often by the "helping hand." In some countries their physical

isolation is exacerbated by laws which isolate them further (such as laws which require special permits to visit or work in "rural areas" or "sensitive areas"). Most of all, victim groups are often bemused by the appalling ignorance as to their plight, concerns, problems and priorities by those (including law persons) who seek to help them. As one rural community in the Philippines so aptly exhorts, legal action groups (and other social action groups) must "go to the people, live with the people, learn from the people." Legal resource groups motivated enough to want to help serve disadvantaged groups and communities must set out patiently to demonstrate that they can indeed be a help and not a hindrance. Working with communities to help implement strategies that the community itself has formulated is perhaps the most appropriate approach. After all, nothing succeeds like success. Moreover, even failures can become stepping stones to success if such failures have been dissected in a participatory fashion enabling the learning from one's mistakes. The challenge for legal resource groups is to restrain their natural tendency of attempting to "make decisions for clients" and to play the role instead of facilitator and resource person enabling victim groups and communities to regain control themselves over their own futures.

#### VI The enemy within us : Liberating ourselves from ourselves

The biggest challenge confronting legal resource groups is to develop a deep and genuine sense of professional humility. The unlearning process may indeed be a most painful one but it is essential that law persons appreciate for themselves how little they know that really matters and how heavy is the intellectual baggage they are saddled with. The relearning process is one where professional humility is so important because only then will one cease to be deaf to the clarion calls emanating from the disadvantaged communities and victim groups. The challenge for the "alternative lawyer" lies in developing new skills, new specialisations (and adapting existing ones) to more appropriately address the concerns and needs of the poor and the powerless. Moreover, he must break the traditional monopoly that the legal profession has always jealously maintained over knowledge of the law. There is an important need also for legal resource groups to attempt to reorient existing elites within the legal profession. It may not be always possible to teach old dogs<sup>2</sup> new tricks but perhaps their bark and their bite may be made to lose a bit of their ferocity. Most importantly, these groups will need to ensure their regenerative capacity and build for the future by assuming a more effective role in the reorientation and delivery of legal education. After all, it is very true of them also that their "old men shall dream dreams, the young men shall see visions." The legal resource movement in Asia may be able to afford the luxury of getting tired. It cannot afford the luxury of growing old.

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2. The metaphor employed is not meant to be pejorative but rather to recognise the founding in India of the new school of canine jurisprudence.

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